

A salary-based decision, even if it correlates with years of service and/or age, cannot be a basis for an ADEA suit.

Blistein v. St. John's College, 860 F.Supp. 256, 265 (D. Md. 1994), aff'd, 74 F.3d 1459 (4<sup>th</sup> Cir. 1996), overruled, in part, on other grounds, Adams v. Moore Business Forms, Inc., 224 F.3d 324 (4<sup>th</sup> Cir. 2000); Hazen Paper Co. v. Biggins, 507 U.S. 604, 611 (1993).

Mr. Kuehnl was also required, after any inability over a reasonable period of time to find the kind of employment to which he was accustomed, to lower his sights and consider other available, suitable employment at a somewhat lower rate of pay to be desirable new employment.

NLRB v. Madison Courier, Inc., 472 F.2d 1307, 1320-21 (D.C. Circuit 1972).

In order to constitute mitigation, Mr. Kuehnl's decision to start his own business must have been bona fide, reasonable, and made in good faith.

Cline v. Roadway Express, Inc., 689 F.2d 481, 489 (4<sup>th</sup> Cir. 1982) (holding that a decision to start a business must be bona fide in order to be proper mitigation of damages); Ford v. Rigidply Rafters, Inc., 984 F.Supp. 386, 390-91 (D.Md. 1997) (holding that a decision to start a business must be made in good faith in order to be proper mitigation of damages); EEOC v. Joe's Stone Crab, Inc., 15 F.Supp.2d 1364 (S.D. Fla. 1998) (holding that a decision to start a business must be reasonable in order to be proper mitigation of damages).